IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 999 (S/S)07

Sudesh Kumar S/o Sri J. Singh,
R/o village Bahadarpur Khadar,
Post Office-Laksar, District Haridwar. ---Petitioner.

Vs.

1. State of Uttarakhand through Secretary,
   Panchaati Raj & Rural Engineering Service, Dehradun,
2. Chief Engineer, Rural Engineering Service, Dehradun,
3. Superintending Engineer, Rural Engineering Service,
   Garhwal Pauri Mandal, Pauri. ---Respondents.

Sri Subhash Upadhyay, learned counsel for the petitioner.
Sri H.M. Raturi, learned Standing Counsel for the State/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Subhash Upadhyay Adv. & Sri Pradeep Haidia, learned counsel for the petitioner and Sri H.M. Raturi, learned Standing Counsel for the State/respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. Issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned order dated 22.06.2007 so far as it relates to the petitioner (annexure no. 6 to the writ petition),

ii. Issue a writ order or direction in the nature of ad interim mandamus staying the effect and operation of the impugned order dated 22nd June 2007 so far as it relates to the petitioner (Annexure no. 6 to the writ petition),

iii. Issue a writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case,

iv. Award the cost of the petition in favour of the petitioner.

Vide order dated 22.06.2007 passed by Superintending Engineer, Garhwal Region Pauri, the petitioner has been transferred from Haridwar to Pauri in public interest.

Learned counsel for the petitioner has submitted that the transfer of the petitioner was made on the ground that there is shortage of Junior Engineers in Pauri Division, but in fact, the order has been issued to accommodate the newly appointed Junior Engineers who were asked to work in division Pauri and who have subsequently managed to get them transferred from district Pauri resulting in deficiency of the Junior Engineers in Pauri division. In para-5 of the writ petition it is asserted that selectin for the post of Junior Engineer (Civil) was held by the Public Service Commission, Uttarakhand and in pursuance of the said selection appointment letters were issued to the Junior Engineers on 20th August 2004. About 32 posts of Juni0r Engineers are in existence in Pauri Division. Vide order dated 20th August 2004 as many as 19 persons were given appointment in Pauri Division. Some other persons were also issued appointments in Pauri Division. Against 32 posts of Junior Engineers, 22 persons who were newly appointed were given posting in Pauri Division.

The petitioner was initially appointed in the year 1995 as Junior Engineer and on 20th August 2001, he was transferred from Almora to Dehradun Division. On 31st August 2004, the

petitioner was transferred in Haridwar Division, against the newly created post. Submission of the learned counsel for the petitioner is that transfer of the petitioner has been made simply on his ground that there fall shortage of Junior Engineers in Division Pauri on the other hand the respondents have transferred a number of Junior Engineers who were appointed in 2004 and were posted in Pauri Division, at different places such as- Haridwar, Dehradun and Udham Singh Nagar.

It is further submitted by the petitioner that the respondents have adopted pick and choose policy while transferring the Junior Engineers from Haridwar as the persons who have been stayed at Haridwar before the petitioner have not been disturbed while the petitioner who joined at Haridwar in the year 2004 as been transferred.

The respondents have filed counter affidavit. In the counter affidavit the respondents have submitted that in the year 2004 as may as 28 Junior Engineers were appointed in Pauri Division out of which only 25 Junior Engineers submitted their joining in Rural Engineer Service Division Pauri, 3 Junior Engineers were sent on Deputation to Public Works Department, Dehradun I pursuance of the order passed by the Secretary Rural Engineering Service Govt. of Uttarakhand dated 03.10.2005. Again some times in the year 2005-2006, 2 Junior Engineers were transferred from district Pauri by the order of Secretary, Rural Engineering Service keeping in view their family problems. Vide orders dated 11.05.2005 ,30.06.2005 and 07.06.2006 as many as 5 Junior Engineers were transferred keeping in view their family problems and their illness as well. Moreover, 5 Junior Engineers were relived for State of U.P. in

pursuance of the order of Union of India allocating them finally to State of U.P. Thus, out of 25 newly appointed Junior Engineers in Division Pauri, only 9 Junior Engineers were transferred, 3 Junior Engineers were sent on deputation to Public Works Department and 5 Junior Engineers were relieved for State of U.P. As there arose acute shortage of Junior Engineers in Pauri Division, consequently the petitioner was transferred from Haridwar to Pauri Division.

The stand taken by the respondents in their counter affidavit, cannot be accepted firstly; on the ground that 17 Junior Engineers have been relieved from Pauri Division for one or other cause whereas; only 2 persons have been transferred to Pauri by the impugned order. Thus the argument advanced by the respondents that there arose acute shortage of Junior Engineers in Pauri Division therefore, the petitioner has been transferred, is not sustainable. Secondly, the persons who were selected in the year 2004-05 by the Public Service Commission have managed themselves to get them transferred to the plain areas within a very short span of time of about 6 months. This Court is experiencing that the employees who are able to get manage their posting in the plain areas, they are being posted in the plain areas with the result that there arises shortage of employees in each and every Department in the hilly areas of State of Uttarakhand. This Court is unable to understand that when there was shortage of Junior Engineers in division Pauri, then what was the occasion before the authorities to get the employees transferred from Hill areas to plain areas further what was the compulsion on the respondents to transfer the Junior Engineers from Pauri Division to some other Division. It is evident that some of the employees have transferred on account of their family problems

and some have been transferred on account of their ailments. It may be mention here that every Govt. Servants have personal problems to some extent but until or unless, the problem is so serious transfer cannot be made on the ground that one's father is more than 70 years old and nobody is there to look after him or for the identical cause.

So far the transfer of the petitioner is concerned, the petitioner is serving in district Haridwar for a considerable period and the petitioner may prefer representation before the authority concerned for redressal of his grievances.

In these circumstances, I direct the Secretary, Panchayati Raj and Rural Engineering Service, Govt. of Uttarakhand, Dehradun to reconsider those transfers which have been made in the year 2005-2006, keeping in view he issues raised by this Court in the body of the judgment, and pass appropriate orders on merit after reconsideration. Further in case if, the petitioner prefers representation before the Authorities, the same shall be considered within a period of four weeks from the date of production of the representation along with a certified copy of this order before the Authority concerned.

With the above observations, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 16,2007:
NCM: